

STATE OF MICHIGAN  
COURT OF APPEALS

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AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL EMPLOYEES,  
COUNCIL 25, and LOCAL 1103.14,

UNPUBLISHED  
January 16, 2014

Plaintiffs-Appellees,

v

CHARTER TOWNSHIP OF HARRISON,

No. 312541  
Macomb Circuit Court  
LC No. 2012-001733-CK

Defendant-Appellant.

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Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting summary disposition in plaintiffs' favor and vacating two arbitration decisions. Because the arbitrators exceeded their authority in failing to carry out the directives of the collective bargaining agreement ("CBA"), we affirm.

Plaintiffs and defendant, the Charter Township of Harrison ("the Township") were parties to a CBA. At all times relevant, the Township maintained a pension committee, pursuant to MCL 41.110b and local ordinance, which administered the retirement system for Township employees. In January 2010, the pension committee adopted a new policy for the calculation of Township employees' service credit (i.e., years of employment) for pension purposes, which was applied retroactively. Plaintiffs filed grievances on behalf of several employees who were negatively affected by the new policy, pursuant to the procedure provided in the CBA. Under the clear and unambiguous language of the CBA, the Township was required to respond to the grievances, in writing, within 10 days, and failure to do so would cause the grievances to be automatically decided in plaintiffs' favor. The Township failed to respond to the grievances within 10 days. Nevertheless, the arbitrators determined that the grievances were not arbitrable because the underlying challenged actions were done by the pension board and not the Township itself.

This Court reviews each of the following de novo: a trial court's decision on a motion for summary disposition, *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); a trial court's decision to enforce, vacate, or modify an arbitration award, *Ann Arbor v AFSCME*, 284 Mich App 126, 144; 771 NW2d 843 (2009); and a trial court's determination whether an issue is

subject to arbitration, *AFSCME, Council 25 v Wayne Co*, 290 Mich App 348, 350 n 2; 810 NW2d 53 (2010).

Whether a particular dispute is arbitrable under an arbitration agreement is a question for the court, not arbitrators. *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305; 690 NW2d 528 (2004); *Kentwood Pub Schs v Kent Co Ed Ass'n*, 206 Mich App 161, 164; 520 NW2d 682 (1994). In the present case, the arbitrators' authority under the CBA was expressly limited to determining whether an alleged violation, misinterpretation, or misapplication of a specific Article or Section of the CBA had occurred. *The mere fact that plaintiffs alleged violations of the CBA made the grievances arbitrable.* The fact that the policy at issue was adopted by the pension committee, as opposed to by the Township itself, did not change that. See *Detroit Police Officers Ass'n v City of Detroit*, 212 Mich App 383, 390; 538 NW2d 37 (1995), *aff'd* 452 Mich 339 (1996) ("An employer is responsible for its bargaining obligations regardless of whatever actions are taken by an independent pension board.").

Further, it is well established "that the calculation of retirement benefits is a mandatory subject of collective bargaining." *Macomb Co v AFSCME Council 25*, 494 Mich 65, 78; 833 NW2d 225 (2013); see also *Detroit Police Officers Ass'n*, 212 Mich App at 391 (stating that "pensions and the significant provisions of a pension plan are mandatory subjects of collective bargaining"). Consistent with this principle, the subject matter of the grievance (i.e., the calculation of retirement benefits) is indeed covered under Article 39 of the CBA, which delineates different retirement calculation methods depending on an employee's date of hire and length of "service." Therefore, while the CBA does not define how to determine an employee's length of "service," we nonetheless conclude that the grievance procedure is appropriate. See *Macomb Co*, 494 Mich at 87 ("Because the collective bargaining agreements cover the calculation of retirement benefits, we conclude that the grievance procedure is the appropriate avenue for the charging parties' claims . . .").

Now that we have determined that the grievance was arbitrable, we turn our attention to the arbitrators' decisions. Judicial review of an arbitration award is narrowly circumscribed. *Police Officers Ass'n of Mich v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). A reviewing court's inquiry is limited to whether the award was beyond the contractual authority of the arbitrator. *Sheriff of Lenawee Co v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999). An arbitrator's award is legitimate only so long as it "draws its essence" from that agreement. *Id.* at 119. An arbitrator's award should be upheld so long as it does not disregard or modify plain and unambiguous provisions of a collective bargaining agreement. *Police Officers Ass'n*, 250 Mich App at 343.

The facts of the present case are somewhat analogous to those of *Sheriff of Lenawee Co*, 239 Mich App 111, where this Court upheld the trial court's vacation of an arbitration decision on similar grounds. In that case, the collective bargaining agreement provided that "the employment relationship shall end" if an employee "knowingly makes a false statement on his application for employment . . . or on any other official document." *Id.* at 120 (emphasis omitted). The employee knowingly made false statements on official documents; more specifically, he falsified the date of his marriage on official forms in order to conceal the fact that there had been a period of nine months during which he was simultaneously married to two different women. *Id.* at 113. Despite that fact, the arbitrator in that case found that the

employee, discharged for that very reason, had been discharged without just cause and reinstated him. *Id.* at 117. The trial court found that the arbitrator exceeded the authority granted him under the agreement and vacated the arbitrator's award. *Id.* at 112-113. This Court affirmed, stating:

[I]t is apparent to us that to avoid what he perceived as an unjust result, the arbitrator impermissibly resorted to his own form of industrial justice. To effectuate the result that the arbitrator determined to be fair, we find, required him to exceed his contractual authority by violating the plain meaning of the rules and regulations and sections of the collective bargaining agreement, by which the parties were contractually bound, and by adding requirements to the contract that did not exist. Accordingly, we conclude, as did the trial court, that the arbitrator exceeded the authority granted him in the collective bargaining agreement and that his decision did not draw its essence from the agreement. [*Id.* at 119-120.]

In the present case, the CBA provided, “[i]n the event that either party fails to answer or appeal within the time limits prescribed, the grievance *will be* considered decided in favor of the opposite party.” (Emphasis added.) The Township failed to answer within the prescribed time limits, but the arbitrators still did not decide the grievances in plaintiffs’ favor. As *Sheriff of Lenawee Co* instructs us, this was erroneous.

In the instant case, in order to avoid the result required under the unambiguous terms of the CBA—an award for plaintiffs—the arbitrators added new requirements to the agreement. Specifically, the arbitrators added a requirement that the dispute involve an *actual* violation, misinterpretation, or misapplication of the CBA—as opposed to an *alleged* one—to even be subject to arbitration in the first place, contrary to the clear language of the CBA.

The Township’s failure to respond to the grievances within 10 days triggered the CBA’s default provision, which mandated that the grievances be decided in plaintiffs’ favor. By refusing to apply the clear and unambiguous language of the CBA and adding new requirements not present in the CBA, the arbitrators’ awards were beyond the scope of the authority granted them under the agreement, and did not draw their essence from the agreement, but instead from the rules created by the arbitrators. Therefore, the trial court properly vacated the arbitrators’ decisions and granted summary disposition in favor of plaintiffs.

Affirmed. Plaintiffs, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ William B. Murphy  
/s/ Pat M. Donofrio  
/s/ Karen M. Fort Hood